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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,464	12/07/2000	Ulf Sawert	DP-303327	1232

7590

07/08/2002

DELPHI TECHNOLOGIES, INC.

Legal Staff

P.O. Box 5052

Mail Code: 480-414-420

Troy, MI 48007-5052

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/731,464	<b>Applicant(s)</b> SAWERT ET AL.	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

-- Th MAILING DATE of this communication app ars on th cover sh et with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
    1. ☐ Certified copies of the priority documents have been received.  
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1-5, 11, 12, and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Richmond (US 6,095,359).

Richmond discloses a cover assembly comprising a cover having a base wall, a skirt 7 extending axially from the base wall, and barrier layer 13 of EVOH.

Regarding claims 1-5, 11 and 20, the embodiment of figure 1 depicts the base wall below the barrier layer and having a raised portion extending upwardly from the base wall and in the opposite direction of the skirt. To the degree set forth in claim 3, the barrier layer is considered within the skirt since it lies within the boundary of the skirt outer wall.

Regarding claims 12, 18, and 19, the embodiment of figure 3 depicts the barrier layer is inside the skirt.

3. Claims 12, 18, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Toyo Seikan Kaisha Ltd (TOXO) (JP 61-232162).

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TOXO discloses a cover assembly comprising a cover having a base wall, a skirt **30** extending axially from the base wall, and a barrier layer **31** of EVOH.

4. Claims 1,5, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Duhaime et al. (US 5,425,470).

Duhaime teaches a tank cover assembly **46** having a cover and a barrier layer **48** attached thereto.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richmond.

Richmond teaches the claimed invention except for the barrier layer having a thickness of approximately 0.2 mm to 2.0 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barrier layer of a thickness of approximately 0.2 mm to 2.0 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over TOXO.

TOXO teaches the claimed invention except for the barrier layer having a thickness of approximately 0.2 mm to 2.0 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barrier layer of a thickness of approximately 0.2 mm to 2.0 mm, since it has been held that where the general conditions of a

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claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duhaime.

Duhaime teaches the claimed invention except for the barrier layer having a thickness of approximately 0.2 mm to 2.0 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barrier layer of a thickness of approximately 0.2 mm to 2.0 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claims 1 and 6-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal et al. (US 5,660,206) in view of Richmond.

Neal teaches a fuel tank and an associated cover assembly wherein the fuel tank has a barrier layer. Neal is silent regarding the cover assembly also having a barrier layer.

Richmond teaches a cover assembly having a barrier layer of EVOH.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an EVOH barrier layer to the tank cover assembly of Neal. Doing so would ensure no vapors escape the closed tank.

Regarding claims 9 and 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barrier layer of a thickness of approximately 0.2 mm to 2.0 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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Regarding claims 6-8 and 15-17, blade terminal **24** is connected to the cover assembly. Claims 7 and 16 are a product-by-process claims which does not further limit the structure of the claimed cover assembly.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tanks and covers having permeation barrier layers and/or blade terminals or fuel tubes connected to the cover are cited for their disclosures.

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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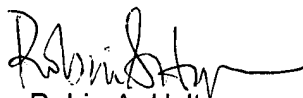
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 10:00 a.m. to 5:30 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
June 29, 2002

  
Robin A. Hylton  
Patent Examiner  
GAU 3727